

NATURE OF THE CASE AND STATEMENT OF FACTS

By Indictment No. 97-1542-001, filed on August 7, 1997, Cory L. Epps was charged with one count of murder in the second degree (Penal Law §125.25[1]) and one count of criminal possession of a weapon in the second degree (Penal Law §265.03). These charges were predicated upon allegations that Epps had shot and killed twenty-three-year-old Tomika Means on May 26, 1997, at approximately 4:30 a.m. Means, accompanied by her friend, Jackie Bradley, had been driving home from a club on the east side of Buffalo, New York when she was accosted and killed by another driver who took umbrage at her honking the horn at him. The facts are more thoroughly discussed in Point I of this brief which challenges the guilty verdict as being against the weight of the evidence.

A Wade/Huntley hearing was conducted by Erie County Court Judge Joseph P. McCarthy on December 9, 1997. Trial before Judge McCarthy and a jury began on April 20, 1998 and was concluded on April 24, 1998, the jury finding appellant guilty of both counts of the indictment.

Defendant Cory Epps was originally scheduled to be sentenced on June 2, 1998 but defense counsel requested an adjournment in order to investigate and, if warranted, file a motion pursuant to Article 330 of the Criminal Procedure Law. The oral application for that adjournment was premised on counsel's receipt of an anonymous letter ascribing the death of Tomika Means to one Russell Montgomery, an individual who was

later convicted of the murder of Paul Pope in the County Court of Erie County (See, People v Russell Montgomery, Indictment No. 98-1217).

Defendant Epps filed his 330 motion on June 5, 1998 but on June 10, 1998, subsequent to oral argument, Judge McCarthy denied the motion, concluding that the anonymous letter was not sufficient legal basis upon which to reverse the fact-findings of a duly chosen jury. The Court proceeded to sentence Epps, who had earlier conceded his status as a second felony offender, to a term of twenty-five years to life upon his conviction of murder in the second degree. Judge McCarthy imposed a concurrent fifteen-year determinate sentence for the crime of criminal possession of a weapon in the second degree. The Court further directed the District Attorney, "in light of the defendant's protestations of innocence and at least this suggestion that there may be someone else responsible... to make sure that justice has been done in this case" (Transcript of June 10, 1998, p. 32).

Appellant is represented on appeal by the Legal Aid Bureau of Buffalo, Inc., David C. Schopp, Executive Attorney. The People have been represented throughout these proceedings by the District Attorney of Erie County. Cory L. Epps is presently serving his sentence at the Auburn Correctional Facility.